

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2799 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VASANTKUMAR RAMCHANDRADAS MEHTA

Versus

SHRI RATILAL KALIDAS TRIVEDI & ORS.

Appearance:

MR AJ PATEL for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/12/96

ORAL JUDGEMENT

1. Heard learned counsel for the petitioner and perused the order of the Gujarat Revenue Tribunal passed in revision application no.TEN.B.A.2/80 decided on 31st March, 1981.

2. The respondent no.1 herein, Shri Ratilal Kalidas Trivedi made a claim to the effect that he is the lawful tenant of the land comprised in Survey No.18 admeasuring

33 gunthas and situated in village Mehmabad of Kheda district. He filed an application before the Mamlatdar and A.L.T under sec.32G of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as the Act, 1948). The Mamlatdar and A.L.T. under its order dated 10th April 1970 had fixed the purchase price of the said land. On appeal, the learned Dy. Collector under its order dated 31st December, 1970 had remanded the matter back, but that order was taken in revision application. That revision application has also come to be dismissed on 14th December, 1971. As per the remand order made by the appellate authority, the Mamlatdar and A.L.T. under its order dated 30th October, 1972 held that the respondent no.1 is a tenant of the land in question and further fixed the purchase price of the land. Against this order, the appeal has been filed and the said appeal was allowed. The matter was taken up in the revision application. The Gujarat Revenue Tribunal allowed the revision application and remanded the matter to the learned Prant Officer for fresh hearing. The Prant Officer had remanded the matter to the learned A.L.T. under its order dated 19-8-1975. The A.L.T. again held that the respondent no.1 is the tenant of the land and accordingly fixed the purchase price thereof. Against that order, an appeal was filed before the appellate authority. The appellate authority set aside the order of the A.L.T.. The revision application has been filed before the Tribunal against the said order of the appellate authority which has been allowed under the order dated 20th April, 1978. The Tribunal held that there was no necessity to decide an application under sec.70b of the Act when the application was filed under sec.32G of the said Act and the question whether the respondent no.1 was the tenant of the disputed land or not could be decided under sec.32G of the Act. So the matter was remanded back to the appellate authority for fresh hearing according to the law and in the light of the observation made by the Tribunal. After making the fresh hearing the appellate authority has confirmed the decision of the Mamlatdar and A.L.T.. The petitioner preferred the revision application against the said decision which came to be dismissed by the Tribunal under the impugned order. Hence this Special Civil Application.

3. The learned Mamlatdar held the respondent no.1 to be the legal tenant of the land and fixed the purchase price which order was confirmed by the Collector and ultimately by the Tribunal under the impugned order. The contention of the counsel for the petitioners is that the respondent no.1 is a sub-tenant of the land in dispute

and in view of the provisions of sec.27 of the Act, 1948 the case of sub-tenancy is illegal and therefore the respondent no.1 has no right over this land as a lawful tenant. It is not in dispute that the first tenant of this land was Chandulal Bhagulal who was the permanent tenant, but thereafter sub-tenancy were created by one person or the other and ultimately the respondent no.1 has entered into the possession of the land in dispute.

4. Sec.27 of the Act, 1948 no doubt provides that no subdivision or sub-letting of the land held by a tenant or assignment of any interest therein shall be valid save as otherwise provided in sec.32F. A proviso to this section provides that nothing in this sub-section shall prejudicially affect the rights of a permanent tenant. So the rights of a permanent tenant were protected. There is no dispute that the permanent tenant has been given the right to transfer the land and even the right to create sub-tenancy. Shri Chandulal Bhagulal has transferred his right of permanent tenancy by document dated 25th March, 1947 to Chaturbhai Ashabhai under the registered document. That Chaturbhai Ashabhai has made the permanent lease in favour of Gordhandas Ambalal and Co. and from that Company the petitioner has come in the possession of the land. The original lessee was the permanent tenant and as he has a right to sub-let the land that sub-letting cannot fall under the clutches of sub-section 1 of sec.27. That sub-tenancy is protected or saved by the proviso to the aforesaid provision. Moreover, the petitioners have failed to make out any case in their favour. The respondent no.1 was the person who was in the possession of the land on the relevant date and as such he was the only person to retain this property. Now on the basis of technicalities, the respondent no.1 can not denied the right of the lawful tenant. Even if the case made by the petitioner is accepted, I fail to see how this land can be reverted back to the petitioners. I am sitting under Article 227 of the Constitution and this court is not under an obligation to correct, by exercising the powers under the aforesaid Article, all species of error or wrong decisions. The Act, 1948 is a specific legislation governing the matter relating to confirmation of tenancy rights as well as the landlord-tenant relations and disputes. The legislature has in its wisdom not provided any further appeal or revision against the order passed by the Gujarat Revenue Tribunal in exercise of its revisional powers conferred upon it under the said Act. The object is to give finality to the decision of the revisional Tribunal. This court sitting under Article 227 of the Constitution cannot assume unlimited

prerogative to correct all species of hardship or wrong decisions. The prerogative must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless the High Court interferes. In this case, as stated earlier, in case the contention of the petitioners is accepted and the decision of the authority below is set aside then it may cause grave injustice to the respondent no.1 who was the person in possession and cultivating the land on the relevant date. The permanent tenant has divested the right, title, interest in the land by creating sublease long back under a registered document.

5. Taking into consideration the totality of the facts of this case, I do not find any substance in this Special Civil Application. The order passed by the Tribunal is perfectly legal and justified and does not call for interference of this court.

6. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated.

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